

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)	
)	
)	
v.)	CRIMINAL NO. 04-10176-RWZ
)	
ITZA RUIZ,)	
a/k/a ITZA GALVAN SANTOS,)	
and HERIBERTO RUIZ,)	
)	
Defendants.)	

**THE UNITED STATES' MOTION AND BRIEF FOR
ISSUANCE OF A PRELIMINARY ORDER OF FORFEITURE**

The United States, by and through its attorneys, Michael J. Sullivan, United States Attorney for the District of Massachusetts, and Antoinette E.M. Leoney and Jennifer H. Zacks, Assistant U.S. Attorneys, hereby move that this Court issue a Preliminary Order of Forfeiture in the above-captioned case pursuant to Title 21, United States Code, Section 853, as incorporated by Title 18, United States Code, Section 982. In support thereof, the United States sets forth the following:

1. On or about June 9, 2004, a federal grand jury sitting in the District of Massachusetts returned a Twenty-Three-Count Indictment charging defendants Itza Ruiz, a/k/a Itza Galvan Santos, and Heriberto Ruiz, (collectively referred to as the "Defendants"), with the following violations: Identity Theft, in violation of 18 U.S.C. § 1028(a)(7) (Counts One through Five); Credit Card Fraud, in violation of 18 U.S.C. § 1029(a)(5) (Counts Six and Seven); Bank Fraud, in violation of 18 U.S.C. § 1344(2)

(Count Eight); Student Aid Fraud, in violation of 20 U.S.C. § 1097(a) (Counts Nine through Fifteen); Making a False Statement in a Loan Application, in violation of 18 U.S.C. § 1014 (Counts Sixteen and Seventeen); False Statements in Document Required by Immigration Law, in violation of 18 U.S.C. § 1546(a) (Counts Eighteen and Nineteen); False Statements or Entries, in violation of 18 U.S.C. § 1001(a)(3) (Count Twenty); and Misrepresentation of Social Security Account Number, in violation of 42 U.S.C. § 408(a)(7)(B) (Counts Twenty-One through Twenty-Three). The Indictment also includes a Forfeiture Allegation, charging the Defendants with Criminal Forfeiture, pursuant to 18 U.S.C. § 982.

2. The Forfeiture Allegation of the Indictment seeks the forfeiture, as a result of the bank fraud offenses alleged in Count Eight, of any property, constituting, or derived from, proceeds the Defendants, Itza Ruiz, a/k/a Itza Galvan Santos, and Heriberto Ruiz, obtained, directly or indirectly, as a result of such violation, up to a value of not less than \$318,250.00, including, but not limited to, the following:

The real property and buildings located at 226 Essex Street, Saugus, Massachusetts, recorded in the Essex County Registry of Deeds at Book 2226, Page 166 (the "Defendant Property").

3. Further, and in accordance with the Indictment, if the above-referenced Defendant Property, as a result of any act or omission by the Defendants, (a) cannot be located upon the exercise of due diligence; (b) has been transferred or sold to,

or deposited with a third party; (c) has been placed beyond the jurisdiction of the Court; (d) has been substantially diminished in value; or (e) has been commingled with other property which cannot be divided without difficulty, the United States is entitled to seek forfeiture of any other property of the Defendants, up to the value of not less than \$318,250.00, pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982.

4. On or about July 1, 2004, the United States caused a Notice of Lis Pendens to be recorded at the Essex County Registry of Deeds against the Defendant real property and buildings located at 226 Essex Street, Saugus, Massachusetts, recorded in the Essex County Registry of Deeds at Book 2226, Page 166. See Essex County Registry of Deeds at Book 23084, Page 148.

5. On or about April 4, 2005, the Defendants entered a plea of guilty to all Counts of the Indictment, including Count 8 - Bank Fraud, in which they are named, and the parties agreed that the Defendants would forfeit the Defendant Property to the United States.

6. By virtue of the Defendants' guilty pleas and pursuant to 21 U.S.C. § 853(a), as incorporated by 18 U.S.C. § 982, and Rule 32.2 of the Federal Rules of Criminal Procedure, the United States is now entitled to a Preliminary Order of Forfeiture against the Defendant Property, or substitute assets, in a value

up to the value of not less than \$318,250.00. See Rule 32.2(b)(2); 21 U.S.C. § 853(p); United States v. Candelaria-Silva, 166 F.3d 19, 41 (1st Cir. 1999).

7. Upon the issuance of a Preliminary Order of Forfeiture, the United States will provide written notice to all third parties asserting a legal interest in the Defendant Property and will publish notice in a newspaper of general circulation of the Court's Order and of the United States' intent to dispose of the Defendant Property in such manner as the Attorney General may direct, pursuant to 21 U.S.C. § 853(n), as incorporated by 18 U.S.C. § 982.

WHEREFORE, the United States respectfully moves that this Court enter a Preliminary Order of Forfeiture against the Defendant Property in the form submitted herewith. A Proposed Preliminary Order of Forfeiture is attached hereto.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney,

BY: /s/Jennifer H. Zacks
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Date: April 8, 2005

CERTIFICATE OF SERVICE

SUFFOLK, ss.

Boston, Massachusetts

April 8, 2005

I certify that I have served a true copy of the foregoing United States' Motion and Brief for Issuance of a Preliminary Order of Forfeiture and proposed Preliminary Order of Forfeiture upon Catherine K. Byrne, Esquire, Federal Defender's Office, 408 Atlantic Avenue, Third Floor, Suite 328, Boston, Massachusetts 02210, as counsel for Defendant Itza Ruiz, a/k/a Itza Galvan Santos, and Stephen A. Jonas, Esquire, Daniel R. Margolis, Esquire, and Sarah E. Ragland, Esquire, Wilmer Cutler Pickering Hale and Dorr LLP, 60 State Street, Boston, Massachusetts 02109, as counsel for Defendant Heriberto Ruiz, by first class mail, postage prepaid.

/s/ Jennifer H. Zacks

Jennifer H. Zacks

Assistant U.S. Attorney